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THE NEW PEACE TREATIES AND INTERNATIONAL LAW.

The submission of the recent arbitration treaties between the United States and Great Britain, and between the United States and France, to the United States Senate, suggests again the undoubted fact that we are living in the greatest transition period so far known in ordinary human history, the transition from the era of universal war to the era of universal arbitration as the highest and final arbitrament of international complications.

Men who still dignify physical prowess as the most effective defense of a man's or a nation's honor, such as Ex-President Roosevelt and Kaiser Wilhelm, find that they are no longer able to wave the bloody shirt before a nation's young men and lead them into bloody slaughter.

Such appeals now become an affront to the superior intelligence of our present day civilization, not because courage or patriotism is on the decline, but because both courage and patriotism find their highest vindication in submission to intelligent discussion, and the conclusions that flow therefrom.

Ex-President Roosevelt's attack on both these treaties has been most untimely, and his statement that there were some attacks on a man's as well as a nation's honor that could only be resented by the force of one's own physical prowess and could not be entrusted to another to avenge, has reflected seriously on the profession to which he belongs and which stands squarely and without equivocation, for the arbitrament of all disputes, personal, national or international, at the bar of intelligent investigation. It is an impudent and egotistical assumption that any man or nation can raise any so-called "question of honor" with another man or nation which unbiased and enlightened intelligence cannot satisfactorily settle.

It is just such "questions of honor" which President Roosevelt excepted from the treaty with England, of 1908, that are intended to be covered by the treaty of 1911, the preamble of the new treaty stating its purpose to be "to exclude certain exceptions contained in the treaty of 1908 and to provide means for the peaceful solution of *all questions of difference* which it shall be found impossible in future to settle by diplomacy."

Andrew Carnegie's fame as a far-sighted statesman bids fair to outshine his reputation as a merchant prince and public benefactor. About six months ago, before these two treaties had been put into definite shape, he prophesied in *Leslie's Weekly*, as follows:

"International peace is on the eve of its greatest victory. Young men of this generation are to see the civilized world under the reign of law."

It is natural that men, whose foresight into the future is limited, should regard intelligent arbitration of international disputes by a regularly constituted tribunal as purely visionary. And even the enthusiast on the subject of international justice does not expect this reform to come in a day.

Judge Simeon E. Baldwin, of Connecticut, expressed the idea that international courts were coming, but coming only with time, when he said: "Nothing of human handiwork that comes to stay is suddenly conceived or produced and this applies to international courts as to everything else."

The interest which these treaties have to the lawyer is not only that they indicate

the trend toward peaceful adjustment of international disputes, but that the present line of suggestion takes the form of regularly constituted tribunals, having clearly defined jurisdiction and whose judgments are to be sanctioned by international public opinion, and probably an international police force.

This scheme is far superior to the haphazard arbitration commissions heretofore selected by and from the parties to the dispute, and only for the purpose of such dispute, and whose findings frequently were by the one independent "fifth" party selected by the other four interested judges. If interest disqualifies a judge in an ordinary civil suit it should disqualify him from sitting in an international arbitration.

The questions to be submitted under these two treaties to the Permanent Court of Arbitration at the Hague, are all differences hereafter arising between the high contracting parties "which are justiciable in their nature." And the word "justiciable" is defined as "being susceptible of decision by the application of the principle of law or equity."

Such peculiar and special declarations as the Monroe Doctrine, not being recognized by any rule of international law or equity, could not give rise to any justiciable question under these treaties and must depend upon diplomacy or the force of arms for their future maintenance. Otherwise, it is difficult to conceive any question that cannot be satisfactorily settled "with honor" by the judgment of the high court hereby given full jurisdiction to hear and pass judgment.

The day of the international lawyer is upon us, when with nations for clients, momentous issues for decision and the world for an audience, the inspiration of the occasion will develop in the lawyer latent powers hitherto not demanded of him. The greatest lawyers and advocates the world has ever seen are still in the future, not in the past, and we are to-day preparing the stage for their coming triumphs.

NOTES OF IMPORTANT DECISIONS

ANTI-TRUST ACT—BOYCOTT BY LABOR UNION OF DEALER ENGAGED IN INTERSTATE COMMERCE.—"The Danbury Hat Case," as Loewe v. Lawlor, 207 U. S. 274, is familiarly known, reappears in inverted title (Lawlor v. Loewe) in 187 Fed. 522, in an opinion by Second Circuit Court of Appeals, reversing and remanding a judgment for triple damages against individual members of United Hatters of North America.

It will be remembered that the Hat Case established the principle, that an action would lie for a combination or conspiracy organizing an injurious boycott of a merchant engaged in interstate commerce, thus preventing the manufacture of articles intended for interstate commerce, and its vendees in other states from reselling the articles imported by it. The principle, at bottom, was that the boycott must have essentially obstructed the free flow of commerce between the states.

Having established this principle the case against 175 individuals was brought on for trial, and the proof was such, in the opinion of the trial judge, that he left but one question for the jury and that was the amount of damages the jury should assess in plaintiff's favor.

This action was by the Circuit Court of Appeals held error and the case was remanded for a new trial.

The discussion by Lacombe, C. J., concurred in by Coxe and Noyes, C. JJ., regarding responsibility of members of the union, for various acts in the furtherance of the boycott, committed by officers and "missionaries" in the name of the union, being a question of fact or a pure question of law, is very interesting.

The trial judge seems to have gone on the theory, that every member of the union was liable for the acts done in the name of the union, however unlawful their nature, whether they were shown to be actively supporting such acts or not, if they contributed money to the support of the union, whose officers were committing unlawful acts in its name.

Judge Lacombe says: "It has been argued here, that the mere fact that any individual defendant was a member of and contributed money to the treasurer of the United Hatters' Association made him the principal of any and all agents who might be employed by its officers in carrying out the objects of the association, and responsible as principal, if such agent used illegal methods or caused illegal methods to be used in undertaking to carry out those objects. We cannot assent to this propo-

sition. The clause of the Constitution of the United Hatters which provides that certain of its officers 'shall use all the means in their power to bring such shops (i. e., non-union shop) into the trade, does not necessarily imply that these officers shall use other than lawful means to accomplish such object. Surely the fact that an individual joins an association having such a clause in its constitution cannot be taken as expressing assent by him to the perpetration of arson or murder. Something more must be shown, as, for instance, that with the knowledge of the members unlawful means had been so frequently used with the express or tacit approval of the association, that its agents were warranted in assuming that they might use such unlawful means in the future, that the association and its individual members would approve or tolerate such use whenever the end sought to be obtained might be best obtained thereby."

Then the court says the proof was claimed to go much further than this. It is said that it was shown that for a number of years officers and "missionaries" of the Hatters' Union and the American Federation, with which it was united, had approved such acts, and literature in abundant quantity apprized all members of what was going on. On the other hand most of the defendants testified they knew nothing about the particular trouble for which suit was brought and did not previously know even that their association had been unionized, were never delegates to any convention or took any particular part in the activities of the union, nor had they ever held any office.

The Court of Appeals considered there was certainly a jury question thus presented.

This reasoning would seem very clear to any one who is unprejudiced and it is seasonable that it should be applied as a corollary to the proposition that labor has a right to confederate for the purpose of advancing its interests.

The position of the trial judge was a sweeping indictment to the contrary, and there seemed a sort of injudicial haste to establish it, instead of giving a jury the right to pass upon its correctness.

That kind of a ruling is not such as tends to allay a feeling of discontent as to alleged favoritism in the law.

On the contrary, however, the view of the Circuit Court of Appeals is in line with the growing sentiment, which would attach individual responsibility to individual activity, and not allow malefactors to put forward a corporate entity, so that its stockholders, guilty and innocent, or the public, may vicariously suffer.

THE SUPREME COURT AND THE STANDARD OIL CASE.

In a recent editorial in the *Outlook*, a great statesman and politician, eulogized the American bench and the nationalism of Chief Justice Marshall, and rejoiced in the stand which had been made by him in making the Constitution paramount and the Supreme Court of the nation an interpreter and enforcer of that constitution, but vigorously asserted the right of a popular criticism of the judiciary. He conceded that perhaps in purely personal law suits, criticism should be sparing, but insisted that in those which affected the public generally, it should be free and open. He refused to concede that the office was worthy of any respect save in so far as the holder was worthy of it, and smashed into fragments the idea that ours is a government by laws and not by men. He recognized in the Supreme Court a third and paramount legislative body, as it were, and preached a gospel of a constitutional construction which should be as elastic as our national needs. It was never intended, he said, that the Supreme Court should have assumed the power which it now possesses and of which Chief Justice Marshall is in a large sense the author. That assumption, however, he maintained, was wise and beneficial, though unauthorized by the terms of the Constitution.

Equally confused, and equally affected with personal interest and pride of opinion, are the governmental ideas of the public at large, and perhaps this was never more the case than it is at the present time. The so-called Standard Oil decision, coming as a climax, as it were, to a series of momentous decisions, has everywhere focused opinion and attention upon the Supreme Court of the nation, and perhaps at no time in our history has there been a greater difference of opinion as to the proper limits of its powers and of its jurisdiction. The populace as a whole rejoices in the decision. It is nevertheless mistrustful, in a vague way, of the court, and focuses its attention upon the dicta of the opinion rather than upon its

real judgment and decision. It unreasonably condemns the giving of an opportunity for any means of reorganization to the subsidiary companies which go to make up the Standard Oil Corporation, and is utterly disregardful of the fact that we must have oil and that the closing of the factories and the refineries and the digging up of the pipe lines can hardly be of economic value.

With the dictum of the court which seems to inject the word "unreasonable" into the Sherman Act, the public has no toleration. It shares in the fears of Mr. Justice Harlan when he says: "In the now not very short life that I have passed in this capitol and the public service of the country, the most alarming tendency of this day, in my judgment, so far as the safety and integrity of our institutions are concerned, is the tendency to judicial legislation, so that, when men having vast interests cannot get the law-making power of the country which controls them to pass the legislation they desire, the next thing they do is to raise the question in some case to get the court to construe the Constitution or the statutes to mean what they want it to mean. . . . Practically the decision to-day—I do not mean the judgment, but parts of the opinions—are to the effect practically that courts may, by mere judicial construction, amend the Constitution of the United States, or an act of Congress. That, it strikes me, is mischievous."

This, we believe to be the opinion of the majority of the American people. It is not, however, by any means an opinion which is universal. It is the opinion of men who think that government can be made in a day, that industry and industrial organization can be transformed over night, that human language can always be definite and that industrial and governmental growth can result from arbitrary and unchangeable legislative codes. Those who hold to it fail to realize that the laws of nature and of trade have never been, and can never, long be constrained by any procrustean bed of legislation, and that no statute or law has yet been made so plain or self-enforcing that it did not need interpretation. The decision of the Supreme Court of the United States, has, we believe, not injected anything into the Sherman Act. It has not injected the word "reasonable" or "unreasonable." The framers of the Sherman Act merely prohibited, and under the Constitution could only prohibit, that which was in restraint of *interstate trade and commerce*. They did not attempt to, and were powerless to, prohibit combinations which were either in restraint of competition or of trade unless they affected that interstate commerce. They were powerless to, and the law in the past has never attempted to, prohibit combinations which were merely created and effective for the lessening of the cost of production and of distribution. The Sherman Act, indeed, merely provides that "Every contract, combination in the form of trust or otherwise, or conspiracy, *in restraint of trade or commerce* among the several states, or with foreign nations is hereby declared to be illegal." We are inclined to believe with the New York *Times*, that the decision "leaves malefactors, actual and intending, where they were, in peril of the law. It frees honest business men from their doubts, from their dread, from their want of confidence almost akin to despair. It is an emancipation proclamation issued to the industries of the United States."

The Supreme Court, as a matter of fact, has merely reaffirmed the law of the past and has merely interpreted the Sherman Act and the "restraint of trade and commerce," therein condemned in accordance with the general acceptation in the past of the meaning of those words and as any sane legislature would have interpreted them if it had been called upon to do so. It is unfortunate that the word "reasonable" entered at all into the discussion, for its use was not necessary. The decision as a whole really merely emphasized the difference between a contract which was in restraint of interstate trade and commerce and a contract or combination which was in restraint of competition, and was entered into for the purpose of an economical production and distribution. It made it quite

clear that every monopolistic restraint of interstate commerce and trade is always unlawful, but that a restraint upon competition is only unlawful if so great and unreasonable as to create a monopolistic restraint of trade. The Sherman Act, it will be noticed, does not use the words "restraint of competition" or "restraint of production, or distribution" in any of its clauses. The court emphasizes its point by quoting the definition of engrossing as found in the statutes 5 and 6 Edw. VI, Chap. 14, and which is as follows: "Whatsoever person or persons . . . shall engross or get into his or their hands by buying, contracting, or promise or taking other than by demise, grant or lease of land or tithe, any corn growing in the fields or any other corn or grain, butter, cheese, fish or other dead victual whatsoever within the realm of England to the intent to sell the same again, shall be accepted reputed and taken as unlawful engrosser or engrossers." And it further correctly states the law when it says that "it is certain that at a very remote period the words 'in restraint of trade' in England came to refer to some voluntary restraint put by contract by an individual on his right to carry on his trade or calling Originally all such contracts were considered to be illegal, because it was deemed they were injurious to the public as well as to the individuals who made them. In the interest of the freedom of individuals to contract, this doctrine was modified so that it was only when a restraint by contract was so general as to be coterminous with the kingdom that it was treated as void. That is to say, if the restraint was partial in its operation and was otherwise reasonable, the contract was held to be valid." The decision of the court, indeed, when taken as a whole, does not legislate nor is it in any way revolutionary. The real fact is that neither the common law nor the Sherman Act ever forbade combinations as combinations, but merely those which were monopolistic of and in restraint of commerce. The Standard Oil Company was held illegal upon the following counts: (1) "Rebates, preferences and other discriminatory practices in favor of the combination by railroad companies"; (2) "Restraint and monopolization by control of pipe lines, and unfair practices against competing pipe lines"; (3) "Contracts with competitors in restraint of trade"; (4) "Unfair methods of competition, such as local price-cutting at the points where necessary to suppress competition"; (5) "Espionage of the business of competitors, the operation of bogus independent companies and payment of rebates on oil, with the like intent." These are all acts which interfere or may interfere with the trade and commerce of others and are not directed towards an economy of production and of distribution. They are overt acts of fraud, of injury or of wrong which are designed to injure others. The court in its opinion merely passed upon the question as to whether or not the bounds of legitimate combination had been passed and interstate trade and commerce interfered with, not necessarily unreasonably, but interfered with at all.

The dissenting opinion of Mr. Justice Harlan which condemns "the attempt of the court to judicially legislate" and to interpolate into the Sherman Act the word "unreasonable" and holds that under that act all combinations which are in any way monopolistic in their nature or organization are basically and fundamentally unlawful, is apt to meet with much popular approval, but after all, what real satisfaction can there be found in it and what solution of the problem does it offer? It may be true, as is said by the eminent jurist, that in the past the Supreme Court has not attempted to differentiate between reasonable and unreasonable contracts or combinations in restraint of trade, that millions of property have changed hands under the decisions of 1896 and 1898 and that prosecutions have been instituted and people have been sent to jail under the act of 1890 as construed by those decisions. The trusts and combinations, however, have grown apace and the decisions have fallen far short of settling the problem. We have, indeed, just passed through an era

of anti-trust legislation which has largely been the work of the demagogue and which has been totally ineffective and scientifically indefensible, and of an era of "trust-busting" which has been equally unsuccessful. In spite of all the legislation and administrative activity, the combinations have grown apace. The reason has been that our anti-trust laws have been unscientific, have often been misinterpreted by the courts, and in their words and interpretation have been so comprehensive that if enforced, they would stagnate all industry and all enterprise. They have, therefore, neither been enforced nor lived up to. The fault has lain in the fact that we have blinded our eyes to the history of the past and of our social and industrial development. We have sought to prohibit that which has never before been prohibited and which never should be prohibited, and to legislate against the laws of political economy and of nature. The result has been not only that we have been unable to prevent combinations of capitalists, but that the farmers, the fruit growers, the tobacco raisers and the laborers are now themselves either combined or are insisting upon the right to combine regardless of the fact that in the past they have strenuously demanded that the right of combination on the part of the manufacturer and middleman shall be denied. Because these combine or desire to combine, much opposition to the trusts is taken away and many feel that the problem is beyond solution. The real fact is that the right of the farmer, the laboring man, the fruit grower and the tobacco raiser and the manufacturer to combine, is indisputable, that is to say, if the history and the analogy of the law count for anything. The co-operation of the producer promotes economy of production and of distribution and is absolutely necessary to this economy. It has never been condemned by the common law or in terms by the statute. It is absolutely necessary where the middleman is allowed to combine or is able to combine in the face of the law because we have made the statutes so comprehensive that they are absurd and lacking public support, are unenforceable. The middleman has really been the barnacle in the industrial world. Our mistake, indeed, has been that we have relied too much on the assumed and questionable right of destruction and too little on the unquestioned right of regulation; that we have assumed that the law and the public policy of the past was opposed to the combination of the producer, when as a matter of fact, its strictures were laid upon the combination of the middleman alone. When a business became affected with a public interest, the right of regulation was assumed, and when a combination of producers created a monopoly and tended to unduly raise the price to the consumer, the right of regulation of prices was insisted upon, but the combination itself was not necessarily deemed to be against public policy or unlawful. It should never be deemed so to be. It was the combination of the middleman, the monopoly created by the middleman, which the law condemned and which our anti-trust statutes should alone attempt to destroy.

Prior to the time of Edward VI, indeed, there seems to have been no attempt on the part of the English courts to declare combinations of either producers or sellers to be invalid. It is true that labor unions or combinations of laborers were often looked upon as illegal conspiracies, but this was not on account of the fact of combination and of combination alone. The theory of a criminal conspiracy was the theory relied upon. The theory of a conspiracy was based upon the fact that at the time of the Black Plague in England, the supply of laborers had been so reduced and the monopoly of labor became so complete that Parliament treated the business of the farm laborer as a business affected with a public interest, and not merely regulated the rate of wages, but made it a criminal offense to demand or to pay a higher wage. A criminal conspiracy is a combination of two or more men to do an unlawful thing or to do a lawful thing in an unlawful manner. The average labor union is organized for the purpose of raising

wages. If the statute fixes the rate of wages and makes it unlawful to demand a higher sum, a union organized for the purpose of exacting a higher sum is a criminal conspiracy. It was because of the statute which fixed wages that the unions and combinations of laboring men were looked upon as unlawful, and not because of the combination itself. In America we have never, at any rate, since our colonial days, fixed the rates of wages by statutes, and our labor unions have never been frowned upon by the courts, provided that they have refrained from the use of force, fraud, intimidation, or interference with the property rights of others.

The same is true, or should be true, of the combination of the producer, the farmer and the manufacturer. The criminal law and the public policy of England frowned upon the combination of the middleman and not of the producer. It sought to prohibit acts which were in restraint of trade and not those which were in furtherance of an economy of production and of distribution and which made production more economical and more profitable. All of the legislation of England, indeed, has been based upon the statutes of Edward VI, which made it a penal offense punishable by quite extreme penalties to forestall, that is, to buy or contract for any merchandise or victuals on their way to a market, or to dissuade persons from bringing their provisions to such market; to regrate, that is, to buy corn or any dead victual in any market and to sell it again in any market or within four miles of the place; to engross, that is, to purchase large quantities of corn or dead victuals for the purpose of selling them again. Even these statutes were repealed in the reign of George III and in recent years we find the English courts sustaining a combination of ship owners which sought to control the entire tea trade of Canton and the ports on the Hongkong river and going so far as to state that so long as no fraud, breach of contract or violation of property rights were indulged in, it was perfectly legitimate for any party or combination to pursue the war of competition to the bitter end. With the beginning of the last century, indeed, the entire lego-commercial public policy of England had changed. The war with France had been fought and won; the fleets of both the Dutch and the French had been practically swept from the seas; the foreign markets which had formerly belonged to the French and Dutch now belonged to England; the cotton gin had been invented; steam had been utilized; the mines had been unearthed; all that was necessary for England was to manufacture and the markets of the world were open to her. At the same time the suffrage had been largely extended and business men had come into political power, and above all, capital had become diffused through the establishment of banks, and the accumulated resources of the country could now be utilized. There was immediately a clamor from all sides for the overthrow of the restrictions of the past. In order to compete in the markets of the world combinations of capital were necessary; goods and products had to be bought and manufactured in large quantities. It was no longer to the interest of the employer that the rates of wages should be regulated by law. He wanted to be able to offer extra prices, because at times he wanted to work his factories night and day, so that he might get his goods in the market before his competitor. He did not want any restrictions on the hours of labor. In the past, law and custom had so operated that no man could become a master mechanic or manufacturer who did not belong to one of the powerful trade guilds, and who had not served an apprenticeship. In this new age of capitalism and of democracy—for it was both a capitalistic and a democratic uprising, men wished to be able to become employers, business men and manufacturers on the strength of their brains and of their capital alone. The consequence was that the restrictive laws of the past were repealed. The old hide-bound judicial decisions were reversed. The labor union, and to a very large extent, the combination of capital, were legitimized. The lid was

taken off. It was lawful to pursue to almost any length the war of competition.

It was at this time that America became settled, that our industries really began to take their form, and that our commercial development began. It is doubtful, indeed, whether the common law of England, as exemplified by the statutes of Edward VI, ever came to America, both because it was not adapted to our commercial and social development, and because it had then been repudiated in Great Britain itself.

The so-called Standard Oil and Tobacco cases have been decided, but there is still much to be settled and to be done. What is to be done with the subsidiary companies? How may they reorganize? The fruit-growers of California and of Oregon have organized a pool and a combination by which to encourage economy of production and to protect themselves against the ravages and encroachments of the railroads and of the middleman. The so-called Burley Tobacco Company of Kentucky has for some time successfully pooled the tobacco crop, and this pool has been legalized both by the legislature and by the courts of Kentucky. The International Harvester Company of America is being sought to be driven from the State of Missouri and has interposed the defence that the combination was made necessary to prevent cut-throat and ruinous competition and the bankruptcy of its constituent companies; that it has not raised the price of machinery and does not charge an undue and unreasonable price, and that it has not been guilty of unfair competition or of any wrongs towards any one. These facts the lower courts have found, but have nevertheless held that the combination is illegal because of the nature of its organization and of its potential power. It is for the supreme court of the nation now to decide as to the legality of a manufacturing combination which, according to the holding of the lower court, has a clean record behind it, and which produces machines as much as the farmer produces wheat or corn or tobacco or fruits. If it holds against the validity of this combination the case will go far towards declaring invalid the combination of the farmer, of the fruit-grower and of the tobacco-raiser. All are dangerous, if dangerous at all, merely on account of their potentiality for harm and on account of their size, and perhaps this menace of potentiality and size may be remedied in some other way than by dissolution or destruction.

A remarkable feature, indeed, of the so called Harvester case, is that the company, although denying the facts of unfair competition or of the commission of any wrong, and insisting upon the economic necessity of its combination, still concedes that such a combination of producers might be used for purposes of extortion, and concedes in such a case the right of governmental regulation as far as rates are concerned. This is, perhaps, the first case where under similar circumstances this right of regulation has been conceded, and it not only evidences a desire for fair play on the part of the corporation, but a deep knowledge of history and of governmental and social facts. We have regulated prices in America under similar circumstances before, and it is perhaps well that we should ask ourselves at this time if the policy of regulation rather than of attempted destruction, is not the wiser one. Combination on an enormous scale is absolutely necessary in the case of railroads, and the more of combination there is the greater can be made the economy of production. We have, however, assumed the right of rate regulation, and it is more than probable that the recent decision of Judge Sanborn in the Minnesota case will be sustained and that that regulation will be made uniform and national, be congressional rather than state, and assume as a basic fact the necessity and actuality of combination and co-operation. When combinations of labor became monopolistic in the reign of Richard II in England, the Statute of Laborers was passed and the rate of wages was fixed by law. When at the time of the American revolution the stay-at-home farmer of Massachusetts and New York unpatriotically

sought to take advantage of the necessities of their countrymen and of the armies at the front, and to raise the price of hay and grain and provisions, the legislatures of those states regulated the price by law. It would be no extension of legal principle to admit the economic necessity of, and the advantages which come from, co-operation and combination on the part of the fruit-growers, the grain-growers, the tobacco-growers and even the manufacturers of farm machinery and of similar articles, but at the same time to concede the right of governmental regulation of rates if those combinations should become monopolistic and their rates unreasonable and oppressive. The legislation and the judicial prejudice of the middle centuries, at any rate, (and it is from the middle centuries that we derive our law), were directed against the midleman and not against the producer. It was the contract in restraint of trade and not the contract in aid of production that was militated against.

If a federal incorporation law and the right to use the avenues of interstate commerce can be conditioned upon the obtaining of a federal charter or of a federal license, the right to refuse such a charter or license unless the right to regulate prices in cases where a combination becomes oppressive or monopolistic, can hardly be denied, since the power to regulate is no more oppressive than the power to dissolve or to refuse the use of the interstate lines altogether. It is also quite probable that the lessening of the tariff on articles upon which a monopoly is threatened, would have a material effect on keeping prices within their normal limits. At any rate the economies of production must be protected and our regulation of the trusts must be worked out with, and in conformity to, economic facts and necessities. Regulation, indeed, we believe to be a more potent weapon than destruction, and the state statutes which have sought to make, and the constructions of the Sherman Act which have made, all combinations illegal, have accomplished absolutely nothing. The basic fault has been in not distinguishing between combinations which are in restraint of a ruinous competition alone and promote an economy of production and of distribution, and combinations which are in restraint of trade and of production. It is hardly necessary to produce arguments in support of the proposition that unlimited and cut-throat competition is one of the most wasteful of all industrial practices. If the money, indeed, which has been expended in advertising soap and in the multiplication of factories, salesmen and clerks, had been expended in manufacturing the product, the world would have been long since cleansed and there would now be no "great unwashed." At any rate, where the combination which is organized for the alleged purpose of economy of production causes prices to rise instead of to decrease, or to remain at a point which is totally disproportionate to the economy created, the combination must necessarily restrain trade, and is, even if not unreasonable, acting in an unreasonable manner and can be proceeded against under the Sherman Act.

There is some confusion in the terminology of the Standard Oil and of the Tobacco Trust decisions, and we believe an unwise and unnecessary injection into the argument of the terms "reasonable" and "unreasonable." The meaning and intention of the decisions, however, seems to be plain and reasonable. The court does not hold that all combinations are unlawful or in restraint of trade. It does not hold that every restraint of competition is necessarily a restraint of trade in the broader and higher sense. Every partnership and every corporation, however small, limits and reduces competition to a certain extent. The partnership is not necessarily unlawful or socially injurious. The court only condemns those combinations which are actually in restraint of interstate commerce and which do positive acts of injury and wrong to the rights and the competing opportunities of others. It reserves to itself the right to decide when and where the line is crossed which divides the combination for economy of production from the combi-

nation which is in restraint of trade, or we might perhaps even say, to decide when the combination becomes unreasonable by going beyond the limits of economy of production. Somebody must pass upon these facts, some body or court must, as occasion arises, decide whether an act or combination has been in restraint of trade or whether it has not. Congress has not drawn the line, nor has it attempted to define the term "restraint of interstate commerce." It is unfortunate that the opinion said that it was the intention of Congress when it passed the Sherman Act, that the court should decide whether a combination was in unreasonable restraint of trade or not. What we believe it should have said, and really in effect did say, was that Congress intended that the court should decide when a combination got beyond the period of innocency and the limitations of a combination for economy of production and distribution and began to encroach upon the rights of others and to restrain interstate trade.

On the general question of the true province of the courts, in construing and validating or invalidating statutes, we are enveloped in a serious legal and social fog, and perhaps always will be. The situation is a serious one and must be fairly and squarely met. It is time for the American people to stop and ask themselves what they really expect of the courts and what they really want. One thing is clear, and that is, in a nation as large as ours and in states as ours usually are, government can only be representative. Though the popular will will always ultimately control and be reflected in our great and stable national policies, we must, in temporary policies, at any rate, and in the gradual upbuilding of our law and of our civilization, and in the construction and enforcement of our statutes and of our law, choose between a supreme court which will have the opportunity of sober second thought and the ability to reflect the sober second thought of the people themselves, or government by legislative committees, who, as a rule, will reflect that which is transitory and who will always be more or less lobby influenced. We demand centralization more and more, and yet centralization must inevitably lead either to a bureaucracy or to court control. As the problem of existence grows more and more difficult, as our population increases and centers, as the industrial conflict grows keener and keener, men will more and more rush to the legislatures for help. The more this is done the more and more will it devolve upon the courts, or in their absence, upon legislative bureaus or committees, to decide how far government shall go and how far not. Some one or some body of men must set the limits and the boundaries of the ever-present struggle between individualism and collectivism, between the right, or the supposed right of the individual to do as he pleases, and the right of the public to protect itself. Some bureau or court or committee, must, as the occasion arises, draw the boundaries between the doctrine of individualism and the doctrine that the public welfare is the highest law, and must determine in what the public welfare really consists. Somebody must construe and enforce the statutes and the law. Already there are over fifty standing committees of Congress. Already, to use the language of the late Mr. Justice Brewer, "Washington is the lobby camp of the world." It is only, indeed, when a bill is of large political import or peculiarly sensational that a full consideration of Congress is ever had. To question the wisdom and the report of a committee in other matters is a species of lese majeste. This must necessarily be so, since any other method of procedure would demand a continuous session of Congress. Judicial supervision of our great governmental policies then, was first advocated and adopted because Hamilton and Washington and Adams and Marshall distrusted the people and their representatives and desired to establish a firm central government. It was for a long time acquiesced in and extended to social and intra as well as to interstate and national matters, because the powers behind the throne, the great commercial and conservative interests, saw in it a bul-

wark against collectivism. And it will, we believe, be maintained in the future, because no other bureau or committee will in the long run be found more responsive to the popular wishes and the sober second thought of the American people, and because the magnitude of the governmental work to be done will make some bureaus or committees or public policy determining courts absolutely necessary. Someone, in short, must decide how far governmental control can and shall go, and that some one must be either a trained but aristocratic body like the English House of Lords, an autocratic and unrepublican, though able and scientific body, like the German Reichstag, an organized bureaucracy like that of France, an American congressional or legislative committee or an American court. In considering the value of the properly organized court we should not fail to consider the value of the written opinion. It centers responsibility and centers it for all time. A man, after all, is most jealous of his intellectual reputation and of the inheritance which he will leave to those who come after him. The judicial opinion is the property of the lawyers and of the scholars and thinkers of the future. If it is illogical, unwise, or unjust, it and its author will be pilloried for all time. There are few men, no matter how corrupt, who will purposely hand down a dishonest or unwise or illogical opinion and thus subject themselves to the continued criticism not merely of their contemporaries, but of those who will come after. The written opinion is a bulwark of popular liberty. If Judge Jeffries had been compelled to announce his judgments to the world and to justify them in writing, there would probably have been no "Bloody Assizes."

We must face conditions as they are. We must protest less and construct more. We must, above all, seek to understand before we criticise. We must face our constitutions and the constitutional constructions of our courts, and either accept or change. We must make up our minds once and for all as to how far government by a judiciary shall go and how far not. We must remember that a large part of the jurisdiction of our courts is self-assumed and is the result of judicial construction, and that the power to set aside a statute as unconstitutional is not specifically granted in our constitutions, either state or national. We can change if we will, and our courts, if we really desire it, can do as those of France and of England. But we should think long and seriously before we advocate the change. We should also remember that the legislative bodies of the world have never yet, and never will be, able to take away the prerogatives of construction from the courts or law-enforcing tribunals, and that of all of our public officials our judges are, and always will be, the most important. Statutes, however plain, must be applied to facts and evidence which are hardly ever plain. The limitations of human language are so great that it is seldom that a legislative body can make its meaning absolutely clear.

ANDREW ALEXANDER BRUCE.
Grand Forks, North Dakota.

LANDLORD AND TENANT—DANGEROUS PREMISES.

LANG v. HILL et al.

Kansas City Court of Appeals, Missouri, June 12, 1911. Rehearing Denied June 28, 1911.

138 S. W. 698.

A landlord owes his tenants the duty of exercising reasonable care to maintain in a reasonably safe condition those portion of the demised buildings and improvements over which control is reserved by him.

JOHNSON, J.: This is an action by a tenant against her landlords to recover damages for personal injuries alleged to have been caused by negligence of the landlords in failing to maintain a stairway on the premises in a reasonably safe condition for the use of their tenants. The answer is a general traverse. A trial to a jury resulted in a verdict and judgment for plaintiff in the sum of $1,000, and

the cause is here on the appeal of defendants. The injury occurred June 3, 1909.

(1) Plaintiff is a married woman, and, together with her family, which consisted of her husband, herself, and one child, was living as a tenant from month to month in a house owned by defendants in Kansas City. The family occupied apartments on the first floor and another family, tenants of defendants, lived on the second floor. There was a stairway connecting the second floor with a porch, and another stairway, containing five or six steps, connecting this porch with the backyard. The backyard and outbuildings were used jointly by the two families, and the stairway from the porch to the yard was for their common use. The house was old, and the stairway just mentioned was in bad repair at the time the tenancy began, and was not repaired until after plaintiff was injured. The attention of defendants' agent had been called to its condition, and he had promised to repair the stairway, but neglected to do so. The wooden steps and stringers had decayed, and the stairway had the appearance of being unsafe; but the two families had used it daily for six months without an accident, and plaintiff states she thought she could use it without risk of immediate injury. On the occasion of her injury, she was going up the stairway in the usual way, and in the observance of ordinary care, when the second step from the top broke under her weight. Her right foot and leg went down through the step, and she received the injuries of which she complains.

Three propositions are urged on our consideration by counsel for defendants, viz.: (1) That plaintiff was guilty in law of contributory negligence. (2) That "even if the defendants reserved control of the stairway, they are not liable in this action, because the condition of the steps at the time of the accident was substantially the same as when the plaintiff moved into the house, and was obviously dangerous." And (3) that the damages assessed by the jury are excessive.

In support of the second proposition, counsel rely on the rule followed in some jurisdictions, notably in Massachusetts, that the duty of the landlord in respect to the maintenance of a common passageway in premises occupied by several tenants is that of due care to keep it in such condition as it was in, or purported to be in, at the time of the letting. Quinn v. Perham, 151 Mass. 162, 23 N. E. 735; Moynihan v. Allyn, 162 Mass. 270, 38 N. E. 497; Shute v. Bills, 191 Mass. 433, 78 N. E. 96, 7 L. R. A. (N. S.) 965, 114 Am. St. Rep. 631. But that rule does not obtain in this state and is unsuited to the needs of modern conditions. In these days of mammoth office buildings and large apartment houses, the Massachusetts rule is an anachronism. The better rule prevails in this state that, with respect to those portions of the building and improvements the control of which is reserved by the landlord, he owes his tenants the duty of exercising reasonable care to maintain them in a reasonably safe condition for the uses of the tenants. McGinley v. Alliance Trust Co., 168 Mo. 257, 66 S. W. 153, 56 L. R. A. 334; Marcheck v. Klute, 133 Mo. App. 280, 113 S. W. 654; Andrus v. Bradley-Alderson Co., 117 Mo. App. 322, 93 S. W. 872; Collins v. Tootle Estate, 137 S. W. 273, decided by this court at this term. The evidence of plaintiff accuses defendants of a negligent breach of this duty, and points to such negligence as the proximate cause of the injury.

(2) We do not agree with the view of defendants that plaintiff was guilty in law of contributory negligence, and hold the characterization of her conduct was an issue of fact for the jury to solve. Though she knew the steps were weakened by decay and were in need of repair, she was not precluded in law from using them, unless they were so glaringly and imminently dangerous as to threaten her with immediate injury. If an ordinarily careful and prudent person in her situation would have concluded that in the exercise of due care she could ascend the steps in safety, she had a right to rely on the implied assurance of the landlords that they were reasonably safe for that particular use.

(3) We confess that if we were sitting as triers of fact we would find the evidence of plaintiff magnifies her injuries, and that the verdict is excessive. But we must admit her evidence is substantial and, if believed—and the jury had the right to believe it—fully sustains the verdict. It shows that in addition to some sprains and bruises she suffered a displacement of the uterus and a conseqeunt nervous disorder of a most serious nature. We feel that we could not reduce the judgment without invading the province of the jury.

The judgment is affirmed. All concur.

NOTE.—*The Reason of the Rule Which Places Upon Landlords the Keeping of Common Passageways Safe.*—The principal case cites the Massachusetts cases as being contrary to its view, and we believe they may be said to stand almost, if not quite, alone. We have thought it instructive to give fuller reference to these cases, and to show what has been stated to be the theory upon which the view of the principal case is based.

In Shute v. Bills, *supra*, the question discussed in this note does not seem to have been directly involved. The tenant in that case "occupied a one-family dwelling house," and, it was sought

to prove that there was a known and established usage or custom in Boston, that the landlord retained control of the outside, yard and roof of rented houses. The court first decided that the evidence was plainly inadmissible, because "it contradicted both the agreement of the parties and the rule of law." Then the court goes on to say: "Moreover, if it were shown that the defendants did retain control of the roof and gutter, yet they could not be held liable upon that ground alone in this action for it does not appear but that the gutter remained in as good condition as when it was let." Then are cited the two other Massachusetts cases, *supra*.

In the Quinn case the tenement was one of several in the same building and the defect complained of was in a common passageway, and it was said: "The general rule, that a landlord does not by implication warrant the fitness for use of a demised tenement, is not applicable to a common passage owned by a landlord, by which several tenements demised by him are reached. The landlord's duty in respect to such passage is that of due care to keep it in such condition as it was in, or purported to be in, at the time of the letting. But he is not bound to change the mode of construction."

The Moynihan case is to the same effect. This case refers to a common platform used by the tenants. It was said: "The plaintiff's father hired the tenement as it was with such conveniences as went with it."

While the Shute case may not by itself cover the question alluded to, yet it refers to the Quinn and Moynihan cases, which do seem squarely to announce a contrary rule to that held by the principal case. It was said: "The duty of the defendant was to use due care to keep the platform and common pasageways in a condition as good as they were at the time of the hiring," and the principle was applied in the Moynihan case to a "rotten" platform, which broke under the weight of plaintiff's wife two months after the premises were rented. Every day ought to increase the danger from a rotten platform and two months might be deemed to make a very sensible increase of insecurity, or at least a jury question should intervene upon the question of whether the landlord had used due care to keep the platform in as good a condition as when the premises were let.

In Whitcomb v. Mason, 102 Md. 275, 62 Atl. 740, 4 L. R. A. (N. S.), 565, it was said: "The weight of modern authority supports the rule that, where the landlord leases separate portions of the same building to different tenants, and reserves under his control the halls, stairways and other portions of the building used in common by all of the tenants as means of access to their respective rooms or apartments, he is under an obligation to use reasonable diligence to keep the portions so retained under his control of the building in a safe condition and free from improper obstructions." To this are cited a number of cases and the opinion goes on to say that this obligation to the tenants "has been held not to result from the implied covenant for quiet enjoyment," etc., "but to be of the same character as that of any other owner of real estate, who permits or invites others to use it for a particular purpose" and "to keep it safe for those using it, within the scope of the invitation."

This obligation seems to us better rested than as stated in Massachusetts decision, because by the Massachusetts reasoning it may be different as to one tenant than as to another, while in the other way, it is the same as to each one of the tenants.

In Gillvon v. Reilly, 50 N. J. L. 26, 11 Atl. 481, there was injury from the shoe heel catching in the oilcloth of a stairway, causing the tenant to fall. Liability was sustained upon the ground that "the landlord was under the responsibility of a general owner of real estate who holds out invitations or inducements to other persons to use his property."

In Dollard v. Roberts, 130 N. Y. 269, 29 N. E. 104, 14 L. R. A. 230, the view advanced in the Whitcomb case was adopted by New York Court of Appeals. It was said that upon the landlord was "the duty of exercising reasonable care in keeping the hallway in suitable repair and condition for the use in safety by his tenants of apartments on the floors above it." By the Massachusetts ruling, a tenant would seem to be in worse plight than other invitees, and would be held responsible for not noticing defects in that part of the premises remaining under the control of the landlord and resort to which was only allowed to the tenant as incidental to the enjoyment of that which had been placed in his control.

There is a very elaborate note to the Dollard case in 14 L. R. A., *supra*, and much authority is referred to to support the view as taken by the principal case. C.

NEWS ITEM.

THE AMERICAN BAR ASSOCIATION, 1911.

The Thirty-fourth Annual Meeting of the Association will take place at Boston, Massachusetts, on Tuesday, Wednesday and Thursday, August 29, 30 and 31, 1911.

The sessions of the Association will be held at 10 o'clock A. M. on Tuesday, Wednesday and Thursday; at 8 o'clock P. M. on Tuesday and Wednesday. They will be held in Huntington Hall, Rogers Building, Massachusetts Institute of Technology, 491 Boylston Street.

The sessions of the Section of Legal Education will be held on Wednesday, August 30, at 3 o'clock P. M., and Thursday, August 31, at 2:30 o'clock P. M., in Room 23 of the Walker Building, Massachusetts Institute of Technology, 525 Boylston Street. This building adjoins the Rogers Building of the Institute.

The session of the Section of Patent, Trade-Mark and Copyright Law will be held on Wednesday, August 30, at 3 o'clock P. M., in Room 22 of the Walker Building, 525 Boylston Street.

The Comparative Law Bureau will hold its session on Monday, August 28, at 3 o'clock P. M., in Room 22 of the Walker Building, 525 Boylston Street.

The Eleventh Annual Meeting of the Association of American Law Schools will be held on Monday, August 28, at 8 o'clock P. M. and on Tuesday, August 29, at 3 o'clock P. M. The Monday night meeting will be held in Room 23 of the Walker Building, and the Tuesday after-

noon meeting in Langdell Hall, Harvard Law School, Cambridge.

The Twenty-first Annual Conference of the Commissioners on Uniform State Laws will begin its sessions on Wednesday, August 23, at 10 o'clock A. M., being Wednesday of the week previous to the meeting of the American Bar Association. The meetings will be held in Room U of the Hotel Vendome, 164 Commonwealth Avenue.

The General Council will meet in Room 16, Rogers Building, Massachusetts Institute of Technology, 491 Boylston Street. The first meeting of the General Council will be Monday, August 28, at 9:30 o'clock P. M.

The Executive Committee will hold its first meeting in Room Q of the Hotel Vendome, ground floor, on Monday, August 28, at 8:30 o'clock P. M.

PROGRAMME OF THE ASSOCIATION.

Tuesday Morning, August 29, 10 O'clock.—The President's Address, by Edgar H. Farrar, of Louisiana, communicating the most noteworthy changes in Statute Law on points of general interest, made in the several states and by congress during the preceding year; Nomination and Election of Members; Election of General Council; Report of the Secretary; Report of the Treasurer; Report of the Executive Committee.

Tuesday Evening, August 29, 8 O'clock.—Reports of Standing Committees and Discussion of Reports. (See Report of 1910, page 770, giving a memorandum of subjects referred.) Jurisprudence and Law Reform; Judicial Administration and Remedial Procedure; Legal Education and Admissions to the Bar; Commercial Law; International Law; Grievances; Obituaries; Law Reporting and Digesting; Patent, Trade-Mark and Copyright Law; Insurance Law; Uniform State Laws; Taxation; Comparative Law Bureau.

Wednesday Morning, August 30, 10 O'clock.—A paper by Justice Henry B. Brown, of the U. S. Supreme Court, retired, on "The New Federal Judicial Code" (Act March 3, 1911). Discussion upon the subject of the paper; Unfinished Reports of Standing Committees; Reports of Special Committees and Discussion of Reports. (See Report of 1910, page 771.) To Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in Litigation; Compensation for Industrial Accidents and their Prevention; To Present to Congress Bills Relating to Courts of Admiralty; Government Liens on Real Estate.

Wednesday Evening, August 30, 8:00 O'clock.—The annual address by William B. Hornblower, of New York, on "Anti-Trust Legislation and Litigation;" Unfinished Committee Reports.

Thursday Morning, August 31, 10 O'clock.—A paper by Robert S. Taylor, of Fort Wayne, Ind., on "Equity Rules 33, 34 and 35;" Discussion upon the subject of the paper; Nomination of Officers; Unfinished business; Miscellaneous business; Election of Officers.

GENERAL INFORMATION.

The Annual Dinner will be given by the Association at 7:30 o'clock P. M. on Thursday, August 31, at the Hotel Somerset. A charge of $4.00 for dinner ticket will be made to each member and delegate. The balance of the dinner expense will be paid by the Association.

The headquarters of the Association will be at the Hotel Vendome, 164 Commonwealth Avenue (corner Dartmouth Street). The Register will be placed in hotel Parlor O (ground floor), which room and those adjoining it will be open during the meeting as reception rooms for members of the Association and delegates.

Members and delegates are particularly requested to register at headquarters, as soon as convenient after arrival, in order that the list of those present may be complete. During the sessions of the Association the Register will be kept at the place of meeting.

It is desirable that all nominations of new members be submitted to the General Council at its first session on Monday evening. Forms will be furnished by the Secretary, if desired. Any nomination put in proper form and sent to the Secretary before the meeting will be submitted to the General Council at its first session.

ENTERTAINMENTS.

Tuesday, August 29, 3:00 P. M., Excursion to Cambridge. 5:00 to 6:00 P. M., Reception at Harvard University. Members will meet at Copley Square in front of the Boston Public Library and proceed by special electric cars to Cambridge. The buildings of Harvard University and other places of interest in Cambridge will be visited and a reception held by the President of Harvard from five to six o'clock.

Thursday, August 31, 4:30 P. M., Automobile Excursion. Automobiles will leave the Hotel Vendome from 4 to 4:30 P. M. for trip through the environs of Boston. A stop will be made en route at the Country Club in Brookline.

Friday, September 1, 10:30 A. M., Steamboat Excursion. The steamer will leave Rowes Wharf, Atlantic Avenue, Boston, at 1:30 A. M. and after sailing down Boston Harbor, will proceed to Salem Harbor and the North Shore and then return. Lunch will be served either at Nantasket Beach or on the steamer.

At each entertainment members will be the guests of the Massachusetts Bar Association.

Members who desire to go upon the automobile excursion on Thursday and on the steamboat excursion on Friday should obtain tickets at headquarters on Tuesday, or as soon thereafter as possible, in order that proper arrangements may be made. No tickets will be required for the Excursion to Cambridge and Reception on Tuesday.

Ladies accompanying members of the American Bar Association are cordially invited by the Massachusetts Bar Association to take part in the various excursions, but members must apply for tickets for ladies as well as for themselves for the excursion of Thursday and Friday.

CONCLUSION.

The dues are $5.00 a year for members. Delegates who are not members pay no dues. There is no initiation fee. There are no additional dues for membership of a Section.

In preparing for debate, members are requested to bear in mind the By-Law that no person shall speak more than ten minutes at a time nor more than twice on one subject.

Members are earnestly requested to post the enclosed card as soon as possible. By so doing they will facilitate greatly the arrangements for the meeting.

By order of the Executive Committee.

GEORGE WHITELOCK, Secretary,
W. THOMAS KEMP, Assistant Secretary,
1408 Continental Building, Baltimore, Md.

August 1, 1911.

PROGRAMME OF THE SECTION OF LEGAL EDUCATION.

The sessions will be held in Room 23 of the Walker Building, 525 Boylston Street, on Wednesday, August 30, at 3 o'clock P. M., and Thursday, August 31, at 2:30 o'clock P. M.

Wednesday Afternoon.—Annual address of the Chairman of the Section, on "The Study of Roman Law in American Law Schools," by Simeon E. Baldwin, Governor of Connecticut.

A paper in memory of George M. Sharp, Chairman-elect of the Section for 1910-1911, who died July 7, 1911, by C. La Rue Munson, of Pennsylvania.

Papers and Remarks on different aspects of the Subject: "The True Mission of State Board of Bar Examiners, and their Opportunity in Legal Education," by Frederic R. Coudert, of New York; John B. Sanborn, of Wisconsin; Andrew A. Bruce, of North Dakota.

Thursday Afternoon.—Discussion of Certain Propositions and Suggestions submitted in the Report of the Committee on Standard Rules for Admission to the Bar.

Discussion of the Report of the Committee on Conferring the LL. B. Degree.

CHARLES M. HEPBURN, Secretary,
Indiana University School of Law,
Bloomington, Indiana.

PROGRAMME OF THE SECTION OF PATENT, TRADE-MARK AND COPYRIGHT LAW.

The meeting will be held in Room 22 of the Walker Building, 525 Boylston Street, on Wednesday, August 30, at 3 o'clock P. M.

Address of the Chairman, Robert S. Taylor, of Fort Wayne, Indiana.

Paper by Edward J. Prindle, of New York City, on "The Relation of the Doctrine of Equivalents to the Interpretation of Claims."

Discussion of the paper will follow.

OTTO R. BARNETT, Secretary,
1519 Monadnock Block, Chicago, Illinois.

PROGRAMME OF THE COMPARATIVE LAW BUREAU.

The Annual Meeting will be held in Room 22 of the Walker Building, 525 Boylston Street, on Monday, August 28, at 3 o'clock P. M.

The order of business will be as follows:

Reading of Minutes.

Annual Address of the Director, Simeon E. Baldwin, of New Haven, Conn.

Treasurer's Report.

Report to American Bar Association.

Discussion of submitted topics.

Election of Officers and Managers.

New Business.

Membership and participation at the meeting are classified as follows:

Class A. All Members of the American Bar Association.

Class B. State Bar Associations, by three delegates each.

Class C. Law Schools, Law Libraries, Institutions of Learning, City and County Bar Associations, by two delegates each.

Class D. Individual lawyers who are not members of the American Bar Association, by personal attendance.

SIMEON E. BALDWIN, Director,
New Haven, Conn.
WILLIAM W. SMITHERS, Secretary,
1100 Land Title Bldg., Philadelphia, Pa.

PROGRAMME OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS.

The Eleventh Annual Meeting will be held on Monday, August 28, at 8 P. M., in Room 23 of the Walker Building, Massachusetts Institute of Technology, Boston, and on Tuesday, August 29, at 3 P. M., in Langdell Hall, of the Harvard Law School, Cambridge.

The headquarters of the Association will be at the Hotel Vendome, and a meeting of the Executive Committee will be held there at 10 A. M., Monday, August 28.

Each member of the Association is entitled to be represented at the Association meeting by not more than four voting delegates. The programme of the meetings of the Association, so far as now arranged, will be as follows:

Monday, August 28, 8 P. M.—Annual Address of the President, Professor William R. Vance, of Yale University, on "The Ultimate Function of the Teacher of Law."

Address by Harlan F. Stone, Dean of the Columbia University Law School, on "The Function of the American University Law School."

Dean Harry S. Richards, of the University of Wisconsin Law School, and Professor Albert M. Kales, of Northwestern University, will open the discussion on President Vance's Address. Professor Walter W. Cook, of Chicago University, and Professor Dudley O. McGovney, of Tulane University, will lead in the discussion of Dean Stone's Address.

Tuesday, August 29, 3 P. M.—Address by Baron Uchida, Japanese Ambassador to the United States, on "The Teaching of Jurisprudence in Japan."

At the close of the address business matters requiring action by the Association and the report of the Executive Committee will be presented.

GEORGE P. COSTIGAN, Jr., Secy.-Treas.,
Northwestern University School of Law,
Chicago, Ill.

CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

The Twenty-first Conference will be held in Room U of the Hotel Vendome, 164 Commonwealth Avenue, beginning Wednesday, August 23, 1911, at 10 o'clock A. M.

All members of the American Bar Association, and particularly the members of its Committee on Uniform State Laws, as well as the representatives of commercial or other bodies interested in uniform laws relating to partnership, incorporation, workmen's compensation or other subjects which may be considered by the Conference, are cordially invited to attend. The members of the Committee on Uniform State Laws of the American Bar Association are also invited to take part in the preparation, examination and discussion of bills relating to such matters.

WALTER GEORGE SMITH, President,
1006 Land Title Building, Philadelphia, Pa.
CHARLES THADDEUS TERRY, Secretary,
100 Broadway, New York, N. Y.

HUMOR OF THE LAW.

"Say, paw," queried little Sylvester Snodgrass, "what's a test case?"

"A test case, my son," replied Snodgrass, Sr., "is a case brought in court to decide whether there's enough in it to justify the lawyers in working up similar cases."—Lippincott's.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Assault and Battery**—Pointing Unloaded Gun.—Pointing an unloaded gun at another, with a threat to shoot him, held not an assault with a deadly weapon.—People v. Montgomery, Cal., 114 Pac. 792.

2. **Assignments**—Unpresented Check.—An unpresented and an unaccepted check on a bank is not an assignment of the deposit of the drawer.—Le Breton v. Stanley Contracting Co., Cal., 114 Pac. 1028.

3. **Attachment**—Jurisdiction.—Where attachment forms the sole basis of the court's jurisdiction, discharge of the writ requires dismissal of the case.—National Exchange Bank of Baltimore v. Rook Granite Co., N. C., 70 S. E. 1002.

4. **Bankruptcy**—Equitable Interests.—While disposition of bankrupt property is with reference to the superior rights of lienholders when legally ascertained the bankruptcy court in selling and disposing of the proceeds will protect the legal and equitable interests of third persons.—McKay v. Hamill, C. C. A., 185 Fed. 11.

5.——Insurance Policy.—Policy of insurance held to pass to trustee in bankruptcy as of date of adjudication, though cash surrender value did not mature till subsequent default in payment of premium.—Equitable Life Assurance Society of United States v. Miller, C. C. A., 185 Fed. 98.

6.——Preference.—A preferential transfer by a bankrupt to a creditor is not a voidable preference unless the creditor had reasonable cause to believe a preference was intended or knew the substantial truth concerning the bankrupt's insolvent condition.—In re Houghton Web Co., D. C., 185 Fed. 213.

7.——Prior Discharge Refused.—A judgment refusing discharge in bankruptcy held not excepted, under Bankruptcy Act, § 17, from a discharge in second bankruptcy proceeding.—Youngman v. Salvage, N. D., 130 N. W. 930.

8.——Trustee's Powers.—Trustee in bankruptcy representing general creditors held entitled to take advantage of invalidity of chattel mortgage as against creditors.—In re Hartman, D. C., 185 Fed. 196.

9. **Banks and Banking**—Fictitious Check.—On a trial for passing a fictitious check, evidence of the non-payment of the check and of the absence of an account in the name of the drawer held admissible—People v. Walker, Cal., 114 Pac. 1009.

10. **Bills and Notes**—Accommodation Maker.—The signer can claim the rights of a surety as against the payee, if the payee knew when the note was executed and the loan was made that such signer was an accommodation signer—First Nat. Bank v. Rusk Pure Ice Co., Tex., 136 S. W. 89.

11.——Descriptio Personae.—Where a husband signed a note and added the word "agent," intending to bind his wife, he was personally liable under the commercial instruments law, though there was no liability on the wife.—Dayries v. Lindsly, La., 54 So. 791.

12.——Dishonor From Non-payment of Interest.—A default of annual interest appearing on the face of a note when transferred is evidence of dishonor.—Merchants' Nat. Bank v. Brisch, Mo., 136 S. W. 28.

13.——Place of Contract.—Notes indorsed and delivered in another state are governed by its laws.—National Exchange Bank of Baltimore v. Rook Granite Co., N. C., 70 S. E. 1002.

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